

Robert Bates on Robert Cooter's "Market Modernization and Median Democracy"

In his paper, Robert Cooter offers important insights into the economic role of the law.

The law, he argues, is a series of obligations, fortified by sanctions. An adequate theory of the law thus requires an understanding of the role of the state – the agency that provides the sanctions that underlie the law. Thus it is that Cooter devotes himself to an informative and insightful discussion of the political process that generate the law.

Cooter characterizes two. The first runs from the bottom up, as it were, and is what he calls "market" modernization; the other runs from the top down, and is what he calls "political" modernization. In addition, he distinguishes several forms of decentralized or bottom up law making.

Cooter's presentation reveals, perhaps unwittingly, the degree to which his work is anchored in the advanced industrial democracies. I say that because, as the discussion of his paper at the meetings suggested, while the basic thrust of the paper is compelling, it nonetheless does drift off into issues that, from the point of view of many developing countries, are Nth order in significance. Why, for example, should we debate direct versus mediated democracy when in most developing countries the issue is not the kind of democracy, but whether there will be any democracy at all? Even more tellingly, the issue may in fact be not whether the state will or not be democratic, but rather whether it will exist or disintegrate.

It is important, therefore, to return to the basic issue that Cooter put before us– the introduction of power and sanctions into economic life. For the study of development, the basic issue is how that power will be employed. For as Barry Weingast¹ points out, when someone is sufficiently powerful to create property rights, then he is also powerful enough to violate them. Depending on how power is employed, then, the resulting legal system can protect or destroy the possibilities for development..

To address this issue, we need a theory of the state. There are, of course, several on offer. Douglass North has his²; so too did Mancur Olson³. I have my own⁴ which, I

¹ Weingast, B. (1995). "The Economic Role of Political Institutions." The Journal of Law, Economics, and Organization 7(1): 1-31.

² North, D. C. (1981). Structure and Change in Economic History. New York, Norton.

³ Olson, M. (1993). "Dictatorship, Democracy, and Development." American Political Science Review 87(3): 567-75.

⁴ Bates, R. H. (1989). Beyond the Miracle of the Market. Cambridge, Cambridge University Press.
See also Bates, R. H. (1994). Comment. The Political Economy of Policy Reform. J. Williamson.

would argue, is of greater relevance to the political economy of failed states, or states whose existence remains problematic.

The mechanism that aligns political interests with a commitment to growth oriented policies, I argue, is political competition. One source is international. Those who possess power tend to use it for protection rather than predation when they perceive the political need to develop a revenue base sufficient to keep an army in the field. When heads of state recognize the role of the economy in building and maintaining the capacity to defend themselves from international competitors, then their states tend to become developmental in orientation.⁵ Another source is domestic. And at this level, the problem becomes more difficult to analyze.

One way of making progress at this level is by posing the question: Under what conditions does it become a winning political strategy for a politician to grow, rather than to redistribute, the wealth of the economy? This question provides a focal point for work on the political economy of development. In earlier work, I have explored the conditions that made rational politicians destroy their economy.⁶ In more recent work, I have sought political factors that make it in the interests of those with the power to engage in predation instead to become developmental in their management of the economy.

As with so many other literatures in “The New Institutionalism,” that in law and economics could, and should, profitably interact with recent work in political economy.

Washington DC, Institute for International Economics: 29-34, , Bates, R. H. (1997). Institutions as Investments. External Finance for Low-Income Countries. ed. R. Kambur. Washington DC, IMF.

⁵ In Africa, many presidents have been school teachers; in Europe, at a comparable “stage” in the development process, they were military commanders.

⁶ Bates, R. H. (2001). Prosperity and Violence. New York, WW Norton.

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